

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

STEVEN M. JACOB,)	
)	
Petitioner,)	4:10CV3073
)	
v.)	
)	
SCOTT FRAKES,)	MEMORANDUM AND ORDER
)	
Respondent.)	
_____)	

This matter is before the Court on the motion of Steven M. Jacob ("petitioner") (Filing No. [221](#)) to clarify the Court's February 27, 2017, Final Progression Order (Filing No. [220](#)). In petitioner's motion, he requests: (1) an order directing the Clerk of the Court or the Respondent to provide petitioner with a page index of exhibits from *Schlichtman v. Jacob*, contained in Filing No. [216](#) to the most recent filing; (2) clarification of when to make a written request for certifying questions to the Nebraska Supreme Court; and (3) an evidentiary hearing with regard to medical causation of death and other claims. After review of petitioner's motion, the Court finds as follows.

BACKGROUND

On April 23, 2010, petitioner filed his habeas petition pursuant to 28 U.S.C. § 2254 (Filing No. [1](#)). Through repeated motions for extension of time, clarification, and miscellaneous motion practice, this case is ready for final disposition.

Accordingly, on February 27, 2017, the Court issued an order for the final progression of the case, providing each party with the opportunity to submit supplemental briefs before the case is deemed submitted (Filing No. [220](#)). On March 8, 2017, petitioner filed this motion seeking clarification of the Court's Final Progression Order.

DISCUSSION

First, petitioner requests the Court direct the Clerk of the Court ("Clerk") or Scott Frakes ("Respondent") to provide petitioner with a page index of the numbered exhibits from *Schlichtman v. Jacob*, where the exhibits are located in the record (Filing No. [221](#) at 1). On January 13, 2017, the Clerk received a letter from petitioner requesting a copy of the docket sheet from Filing No. [191](#) to the most recent filing (Filing No. [218](#) at 1). The Clerk delivered a response to petitioner at the Nebraska State Penitentiary "by other means" (Filing No. [218](#) receipt). The Clerk's response stated, "AUDITING REQUIRES THAT WE RECEIVE PAYMENT BEFORE SHIPMENT OF COPIES," and indicated a total cost of \$2.00 for the four pages that petitioner requested (*Id.* at 1).

A prisoner proceeding in *forma pauperis* is not entitled to receive copies of documents without payment. 28 U.S.C.

§ 1915; see also *McNeil v. City of Omaha*, No. 8:07CV143, 2008 WL 312715, at *3 (Jan. 30, 2008). As of the date of this memorandum and order, petitioner has not submitted the \$2.00 payment for the copies of the docket sheet he requested. These documents are available to petitioner upon payment of the requisite fee. Accordingly, petitioner's motion for an order directing the Clerk or respondent to provide him with a page index of the number of exhibits will be denied as moot.

Next, petitioner seeks clarification as to when he should assert his renewed motion to certify a question to the Nebraska Supreme Court. It appears from the present motion that petitioner wishes to renew his original motion to certify questions to the Nebraska Supreme Court as well as asserting a new question regarding the applicability of *Johnson v. United States*, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015) to Neb. Rev. Stat. § 28-304 (Filing No. [221](#) at 2). Compare Filing No. [183](#) with Filing No. [221](#) at 2. Petitioner's present request is not a motion to certify questions to the Nebraska Supreme Court, rather just clarification on when the Court wishes petitioner to make that motion.

This case has gone through extensive motion practice to prepare it for disposition. The petitioner may include his motion to certify questions to the Nebraska Supreme Court with

his supplemental brief. The Court will consider the voluminous record after April 24, 2017, in accordance with the Court's Final Progression Order (Filing No. [220](#)). The Court will rule on any pending motions with a complete record at that time.

Finally, petitioner's amended petition requests "an evidentiary hearing to prove the factual allegations contained in this Petition." (Filing No. [136](#) at 183). The Court reserves ruling on petitioner's request for an evidentiary hearing until after all briefing is submitted in compliance with the Court's Final Progression Order (Filing No. [220](#)).

IT IS ORDERED:

1) Petitioner's motion to order the Clerk of the Court or the Respondent to provide petitioner with a page index of exhibits from *Schlichtman v. Jacob* is denied as moot.

2) Petitioner may include a renewed motion to certify questions to the Nebraska Supreme Court with his supplemental brief in the same time frame allowed under the Court's Final Progression Order (Filing No. [220](#)).

3) The Court reserves ruling on petitioner's request for an evidentiary hearing until all briefing is submitted in accordance with the Court's Final Progression Order.

4) Nothing in this order shall be construed as altering or amending the time frame set forth in the Court's Final Progression Order.

DATED this 13th day of March, 2017.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court